

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

LEANNA M. BRUNELLO  
(Claimant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-139  
Case No. 72-1747

S.S.A. No.

GENERAL DENTAL LABORATORY, INC.  
(Employer)

Employer Account No.

The employer appealed from Referee's Decision No. S-21239 which held the claimant was not disqualified for benefits under section 1256 of the Unemployment Insurance Code and that the employer's reserve account was not relieved of benefit charges under section 1032 of the code.

STATEMENT OF FACTS

The claimant was last employed for about three months as a bookkeeper and delivery girl for the employer. The claimant left this work on December 13, 1971 before the end of the regular working day because she felt she could no longer tolerate her working conditions. The claimant then filed an additional claim for unemployment insurance benefits in connection with a previously established benefit year. The Department determined and ruled that the claimant left her work with good cause and the employer appealed to the referee.

According to the evidence presented by the claimant, she enjoyed her work for the employer and with her fellow employees except for the president, who was one

of her supervisors. The president subjected the claimant's body to repeated offensive rubbing and touching until the claimant was convinced the action was not accidental but deliberate and she objected. The president ceased that activity but he then became very critical of the claimant's work and would curse and yell at her. He also would ask very personal questions about the claimant's relationship with her boyfriend and make derogatory remarks about his appearance. The president ordered the claimant not to smoke although other employees were permitted to smoke at work. On the last day of work the claimant misunderstood some instructions to send one envelope by first class mail but another envelope by parcel service and sent both by first class mail. When the president found out about the mistake, he shoved the claimant and yelled at her that she was stupid and ignorant. The claimant said she was doing the best she could so that she had better be replaced and left. The claimant had complained about her treatment several times. She continued working as long as she did for the employer only because of her need for employment.

The president denied generally the claimant's allegations and in particular that he had criticized her unfairly, or cursed at her, or put his hands on her body, or called her stupid. According to the president, the claimant's work was so unsatisfactory he was thinking of discharging her when she quit. He told her to apply herself and keep her mind on her work. He commented about the claimant's boyfriend because she was a nice looking girl and should have better taste. Other employees who smoked worked some distance away, but the claimant was stationed right outside the president's office door and her smoking bothered him. He did not close the door because his office was small. The president testified that whenever he touched the claimant on the shoulder, she would tell him to get his hands off her. He touched the claimant on the shoulder only on two occasions, one of them the day she quit, only in order to call her attention to something.

According to the notations made by a Department representative on December 21, 1971 on a Record of Claim Status Interview (Form DE 2403), a fellow employee stated by telephone that the claimant was discriminated against and cussed at by the president

and given a considerable amount of abuse in comparison with other employees. This fellow employee, a dental technician, testified he worked in a different room but was in and out of the office several times a day. He first testified he did not believe he had given information to the Department that the claimant had been discriminated against. He then denied that he had so stated or observed any such discrimination or had any knowledge of it other than what the claimant had told him.

The referee made findings that the claimant's allegations were true. The referee found the limitation upon the claimant's smoking not unreasonable or discriminatory because of the close work quarters. Because of the other conditions of work, however, the referee concluded the claimant voluntarily left her most recent work for compelling reasons constituting good cause within the meaning of section 1256 of the code. The employer contends the referee erred in his findings and conclusion.

#### REASONS FOR DECISION

Sections 1256, 1030 and 1032 of the California Unemployment Insurance Code provide for the disqualification of the claimant and for the relief of the employer's reserve account if the claimant left his most recent work voluntarily without good cause or was discharged for misconduct connected with his most recent work.

Even though the employer might eventually have discharged the claimant, since the employment relationship ended because the claimant voluntarily left her work and not because of a discharge, we must decide whether such voluntary leaving was with or without good cause.

Good cause for leaving work cannot be determined in the abstract but only in relation to a set of facts and the remedial purpose of the law to insure a diligent worker against the vicissitudes of enforced unemployment not voluntarily created by the worker without

good cause. (California Portland Cement Company v. California Unemployment Insurance Appeals Board (1960), 178 Cal. App. 2d 263; 3 Cal. Rptr. 37) Over the years this board has evolved the principle that there is good cause for the voluntary leaving of work when the facts disclose a real, substantial and compelling reason of such nature as would cause a reasonable person genuinely desirous of retaining employment to take similar action. (Appeals Board Decision No. P-B-27)

In Appeals Board Decision No. P-B-126 we recognized that good cause to leave work may exist where the conditions of employment are so onerous as to constitute a threat to the physical or mental well-being of an employee or where the actions of a supervisor are particularly harsh and oppressive. In California, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily harm, from personal insult, from defamation, and from injury to his personal relations. (California Civil Code, Section 43)

In the present case the referee made findings in accordance with the position of the claimant and her testimony and contrary to some of the testimony of the witnesses for the employer. From our review of the record, we conclude these findings are not against the weight of the evidence and therefore they are accepted for this appeal.

We conclude also that even though the claimant may not have been considered a satisfactory employee and may have made some errors in her work, this did not justify the president's shoving the claimant and yelling at her that she was stupid and ignorant or the other insulting and abusive physical and verbal treatment afforded the claimant. Such supervisory action and comments upon and prying into the claimant's personal life unrelated in any way to her work can hardly be considered a part of the normal give and take in an employment relationship. When complaints brought only more abuse, it is our opinion the working conditions became intolerable and we hold that compelling reasons constituting good cause existed for the claimant to leave her work. Therefore, she is not disqualified for benefits under section 1256 of the code and the employer's reserve account may not be relieved of benefit charges under section 1032 of the code.

DECISION

The decision of the referee is affirmed. The claimant is not disqualified under section 1256 of the code. Benefits are payable provided the claimant is otherwise eligible. The employer's account is not relieved of charges.

Sacramento, California, May 2, 1972.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

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